IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27293-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
CHRISTIAN G. GARCIA,	)	
	)	**UNPUBLISHED OPINION**
Petitioner.	)	

Sweeney, J. — This is a prosecution for unlawful imprisonment of a child. The case comes before us on discretionary review of the trial court's denial of a *Knapstad* motion. *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986) (dismissal required if State cannot make out a prima facie case). The court apparently concluded that absence of consent was sufficient to support the "restraint" element of unlawful imprisonment. It is not. We then reverse the denial of the *Knapstad* motion and dismiss the case.

FACTS

Christian Garcia coached girls soccer in the spring of 2007. Z.N.B. was a member of her team. Ms. Garcia began babysitting for Z.N.B. and her two brothers. By the fall

of 2007, Z.N.B.'s parents requested that Ms. Garcia no longer have contact with Z.N.B. They confiscated a cellular phone that Ms. Garcia gave to Z.N.B and told Ms. Garcia to stop giving their daughter phones. And they told Ms. Garcia that they did not want their daughter to be alone with her again. A couple of months later, the parents found a second cellular phone that Ms. Garcia had given to Z.N.B. The parents contacted police. Z.N.B. informed the investigating detective that Ms. Garcia gave her the phone during one of several occasions when Ms. Garcia met Z.N.B. at or around the child's school. Ms. Garcia met Z.N.B. at school on several Thursday mornings; she waved Z.N.B. over to her car and drove Z.N.B. to a nearby grocery store for breakfast.

The State charged Ms. Garcia with four counts of unlawful imprisonment arising from her interactions with Z.N.B. Ms. Garcia moved to dismiss the information pursuant to *Knapstad.* The court denied Ms. Garcia's *Knapstad* motion. Ms. Garcia then petitioned for discretionary review. A commissioner of this court granted the petition, and the State did not move to modify the commissioner's ruling.

DISCUSSION

Discretionary Review

The State begins by contesting our discretionary review of the trial court's ruling.

A commissioner of this court granted Ms. Garcia's motion for discretionary review

pursuant to RAP 6.2 (authorizing the court to take discretionary review). That rule specifies that motions for discretionary review are governed by Title 17 (Motions) of the Rules of Appellate Procedure. RAP 6.2(c). And RAP 17.7 provides that an "aggrieved person" may object to a commissioner's ruling "only by a motion to modify the ruling." The State did not move to modify the commissioner's ruling. The State's present objection to this court's consideration of Ms. Garcia's matter is then, at the least, untimely. *See City of Spokane v. Marquette*, 103 Wn. App. 792, 796-97, 14 P.3d 832 (2000), *rev'd on other grounds*, 146 Wn.2d 124, 43 P.3d 502 (2002).

The matter, on its merits, is then properly before us.

Unlawful Imprisonment—Restraint

Ms. Garcia argues that the trial court erred in ruling that physical restraint was not an element of unlawful imprisonment for a child less than 16 years old. We review a trial court's denial of a *Knapstad* motion de novo. *State v. Hirschfelder*, 148 Wn. App. 328, 333, 199 P.3d 1017 (2009), *petition for review filed*, No. 82744-3 (Wash. Feb. 20, 2009). And the question presented is strictly a question of law—does unlawful imprisonment of a child under the age of 16 require restraint—so for that reason also our review is de novo. *State v. Benn*, 161 Wn.2d 256, 262, 165 P.3d 1232 (2007).

Unlawful imprisonment requires that the State show the accused "knowingly

restrains another person." RCW 9A.40.040(1). And "'[r]estrain' means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with [her] liberty." RCW 9A.40.010(1). The lack of consent element is satisfied by "any means including acquiescence of the victim, if [she] is a child less than sixteen years old" whose parents have not acquiesced to the restraint. RCW 9A.40.010(1)(b).

Here is the State's factual showing on this point:

> [T]he defendant waved to attract the victim's attention and on occasion got the victim into the defendant's car. The defendant would transport the victim to another location for "breakfast." Def. App. pg. 3. There were multiple other contacts and the defendant gave the victim two cell phones. All of the activities were without the permission of the parents. The defendant knew she was not permitted to contact the victim as she told the victim to hide the gifted cell phone.

Br. of Resp't at 7.

The State showed that Ms. Garcia acted knowingly. RCW 9A.40.040(1); Clerk's Papers (CP) at 3, 5. And the State showed lack of consent because the child's parents did not acquiesce. RCW 9A.40.010(1)(b); CP at 3-5. But that does not support the second element required for unlawful imprisonment—restraint. It means restricting a person's movements. RCW 9A.40.010(1). And Ms. Garcia did not restrict Z.N.B.'s movements. She invited Z.N.B. into the enclosed space of her car. There is no showing that she

locked the doors of the car or otherwise made it dangerous or impossible for Z.N.B. to exit the car. *See State v. Kinchen*, 92 Wn. App. 442, 452 n.16, 963 P.2d 928 (1998) (a person who knows of an escape route may be "restrained" only where the means of escape present a danger or more than a mere inconvenience). The State has then failed to make a prima facie case of unlawful imprisonment under RCW 9A.40.040(1). *See Knapstad*, 107 Wn.2d at 356.

The State must offer evidence that is legally sufficient to support a conviction. *Id.* at 350. The State argues that Ms. Garcia failed to comply with the *Knapstad* requirement that the defendant affirm that there are no material disputed facts. *Id.* at 356. It argues that Ms. Garcia explicitly stipulated to only the investigating officer's four-page affidavit while the State had gathered "some 87 pages of investigative reports." Br. of Resp't at 5. But Ms. Garcia conceded the truth of every fact the State relies on. CP at 7, 8, 13, 14-17. And the State directs us to nothing else that would tend to support that Ms. Garcia restricted Z.N.B.'s movements. Further proceedings would, therefore, be useless. RAP 2.3(b)(1). We conclude that no rational trier of fact could find sufficient evidence of all the essential elements of unlawful imprisonment here.

We reverse the trial court's denial of Ms. Garcia's *Knapstad* motion and we dismiss the case.

A majority of the panel has determined that this opinion will not be printed in the

Washington Appellate Reports but it will be filed for public record pursuant to

RCW 2.06.040.

_____
Sweeney, J.

WE CONCUR:

_____
Schultheis, C.J.

_____
Brown, J.